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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,953	07/11/2003	Hiroshi Okada	33812R0021	2153

441 7590 03/09/2004

SMITH, GAMBRELL & RUSSELL, LLP  
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WASHINGTON, DC 20036

EXAMINER
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NGUYEN, KIM T

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,953

Applicant(s)

OKADA ET AL.

Examiner

Kim Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☒ Certified copies of the priority documents have been received in Application No. 09/603,963.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/11/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The preliminary amendment filed on July 11, 2003 has been received and considered. By this amendment, claims 1-2 are now pending in the application.

#### ***Specification***

1. The updated status such as "now US. Patent No. \_\_\_\_" or "now abandoned" disclosed in the preliminary amendment page 1 should be inserted.

#### ***Claim Objections***

1. Claims 1-2 are objected to because of the following informalities:
  - a) In claim 1, line 17; and claim 2, line 5; the claimed limitation "a player" should be corrected to "the player".
  - b) In claim 2, line 7, the claimed limitation "et peculiarly" should be corrected to "set peculiarly".
  - c) In claim 2, line 10, the claimed limitation "state parameter" should be corrected to "state parameters".

Appropriate correction is required.

#### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,609,968. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the patent '968 teaches all the limitations of claims 1 and 2 of the present application; claims 1 and 2 of the present application merely broaden the scope of claim 1 of the patent '968 by eliminating the limitation "egg data receiving means F".

*Allowable Subject Matter*

2. Claims 1-2 would be allowable if rewritten or amended to overcome the double patenting rejection and the claim objections, set forth in this Office action.

3. The following is a statement of reasons for the indication of allowable subject matter:

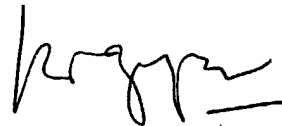
Prior arts of record does not disclose a rearing simulation apparatus which comprises a state parameter processing means A for increasing and decreasing a state parameter based on variables that vary according to a state of a virtual living thing and that vary according to degree of care of the player in response to the operation request of the virtual living thing, for increasing and decreasing a "care" parameter representing a degree of completeness of care by a player in response to the virtual living thing's request, and for increasing and decreasing a "character" parameter, the "character" parameter is increased or decreased based on the "care" parameter that represents the degree of completeness of care of the player and the "basic value of a category"; operation request processing means B for generating the virtual living thing's operation request based on the "character" parameter; an operation request display means C for displaying the operation request items of the virtual living thing; a rearing stage processing means D for metamorphosing the virtual living thing to a next rearing stage based on metamorphosis requirements which depends on the state parameters; and a rearing stage display means E for displaying the rearing stage in response to the request for displaying the rearing stage.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (703) 308-7915. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg, can be reached on (703) 308-1327. The central official fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.



Kim Nguyen  
Primary Examiner  
Art Unit 3713

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Date: March 5, 2003